

# **EXHIBIT B**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

-----X  
In Re: Chapter 11  
  
Case No.  
01-01139 JKF  
  
W.R. Grace & Co., et al.,  
  
Debtors. (Jointly Administered)

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\* \* \* CONFIDENTIAL \* \* \*

— — —  
May 13, 2009

— — —  
DEPOSITION of RICHARD FINKE, held  
at the offices of Kirkland & Ellis, 655  
Fifteenth Street, N.W., Washington, DC,  
commencing at 9:32 A.M., on the above  
date, before Lisa Lynch, a Registered  
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Reporter, License No. XI00825, and  
Certified Realtime Reporter

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1           Q.     Is it your position that  
2     contribution and indemnification claims  
3     fit within the indirect PI definition?

4           A.     Yes.

5           Q.     Mr. Lewis had asked you a  
6     series of questions with regard to the  
7     treatment of Libby claimants' claims under  
8     the Plan and their claims specifically as  
9     to Maryland Casualty, the State of Montana  
10    and Burlington Northern. Do you recall  
11    that questioning?

12          A.     Yes.

13          Q.     I believe you testified --  
14    and obviously correct me if I'm wrong --  
15    that the Libby claimants' claims against  
16    the State that give rise to the State's  
17    claims against the debtors for  
18    indemnification or contribution go into  
19    the Trust.

20                   MS. HARDING: Object to  
21                   form.

22          Q.     Is that your testimony?

23          A.     That the Montana -- that  
24    the State of Montana's claims for

1 indemnification would be channeled to the  
2 Trust, yes.

3 Q. And you also testified that  
4 the State does not get the benefit of the  
5 524(g) injunction?

6 A. That's correct.

7 Q. Sir, you testified that to  
8 the extent there was independent conduct,  
9 those claims would not go into the Trust.  
10 Is that correct?

11 MS. HARDING: Object to  
12 form and I think it's -- it doesn't  
13 properly characterize the extent  
14 and -- extent of everything that  
15 you said but to the extent you can  
16 answer, go ahead.

17 Q. If you want to clarify what  
18 you testified to earlier as far as  
19 independent conduct not going to the  
20 Trust, I'd appreciate it.

21 A. Right. I believe I  
22 testified that it is our understanding  
23 that to the extent the State of Montana's  
24 liable to Libby claimants based on causes

1 of action that are separate and  
2 independent from any Grace liability, that  
3 the -- that the State's liability would  
4 not be -- or the State would not have  
5 recourse to the PI Trust for that  
6 liability.

7 **Q. What do you mean by**  
8 **separate and independent liability from**  
9 **Grace's liability?**

10 MS. HARDING: Object to  
11 form. It think calls for  
12 speculation. But to the extent you  
13 can answer, go ahead.

14 A. Well, in this instance,  
15 it's my recollection -- although I haven't  
16 gone back to look at the decision, it is  
17 my recollection that the Supreme Court of  
18 Montana found that the State had an  
19 independent duty to at least some of the  
20 Libby claimants and that with respect to  
21 the State of Montana, that's what I had in  
22 mind.

23 **Q. You had in mind the**  
24 **Montana's Supreme Court decision?**

1 A. Yes.

2 Q. As you sit here today as a  
3 representative of the estate, how do you  
4 define independent conduct on the part of  
5 the State of Montana?

6 MS. HARDING: Object to  
7 form and object to the extent that  
8 it calls for legal analysis and  
9 legal conclusion. I think it's an  
10 improper question but -- and it's  
11 overly broad. To the extent you  
12 can answer, go ahead. And if you  
13 can't answer, I would caution you  
14 not to speculate, so...

15 A. Conduct that, you know, for  
16 which Grace has no liability and which is  
17 not derivative of any Grace liability.

18 Q. Let me follow up with:  
19 What do you mean by derivative on the part  
20 of Grace?

21 MS. HARDING: Same  
22 objection.

23 A. I'm sure --

24 MS. HARDING: I just want

1 to object to the extent that it  
2 calls for a legal conclusion under  
3 Montana law so --

4 A. And I'll add I'm sure  
5 there's a better way to articulate it but  
6 I really don't have an explanation better  
7 at this point.

8 Q. And do you believe that it  
9 relates to what would be --

10 A. Could you repeat the  
11 question, please?

12 Q. -- derivative under Montana  
13 law?

14 MS. HARDING: Can you just  
15 restate the question, please?

16 Q. Sure. That was  
17 inarticulate. I apologize.

18 I was asking you what did you mean  
19 by derivative liability and I believe your  
20 answer was you couldn't articulate that.  
21 Is that fair to say?

22 A. Yes. Sitting here, I  
23 really don't feel comfortable trying to  
24 articulate it.

1                   Q.       If we wanted to find out  
2   what derivative liability is, where would  
3   you look?

4                   A.       I would --

5                             MS. HARDING:   Object to  
6                   form.

7                   A.       I would want to conduct  
8   some legal research on it.

9                   Q.       Mr. Finke, I believe you  
10   had testified earlier in the line of  
11   questioning from Mr. Lewis as to the  
12   benefits the Plan proponents received from  
13   the channeling injunction and one of those  
14   benefits you articulated to be it enabled  
15   the debtors to apply uniform standards to  
16   similar claims to avoid inequities of the  
17   tort system. Is that a fair  
18   characterization of your earlier  
19   testimony?

20                  A.       Yes, that was one of the  
21   reasons.

22                  Q.       Okay. Do you consider the  
23   State of Montana's contribution and  
24   indemnity claims similar to other claims